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IN THE

Supreme Court of the United States

October Term, 1981

NORTHERN PIPELINE CONSTRUCTION CO.,
Appellant,

vs.

MARATHON PIPELINE COMPANY and
UNITED STATES OF AMERICA,
Appellees,

UNITED STATES OF AMERICA,
Appellant,

vs.

MARATHON PIPELINE COMPANY and
NORTHERN PIPELINE CONSTRUCTION CO.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA, FOURTH DIVISION

REPLY BRIEF FOR APPELLANT NORTHERN PIPELINE CONSTRUCTION CO.

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I. INTRODUCTION

This reply brief is submitted on behalf of appellant Northern Pipeline Construction Company ("Northern") in response to the arguments made in the brief of appellee Marathon Pipeline Company and in the brief of *amicus curiae* Beneficial Corporation in support of appellee.

Both the appellee and the *amicus* argue that the Bankruptcy Reform Act unconstitutionally vests Article III judicial power in a court lacking Article III tenure and salary requisites. Additionally, appellee and *amicus* argue that the Reform Act's creation of bankruptcy courts as adjuncts to the District Courts is constitutionally inadequate in light of Article III requirements.

In reply, appellant Northern will restrict its discussion of these issues to the Article I-Article III controversy.

II. APPELLEE AND ITS *AMICUS* HAVE IGNORED OR MISCHARACTERIZED THE POSITION OF APPELLANT NORTHERN IN THIS APPEAL.

Neither appellee nor *amicus* has addressed the arguments of appellant Northern directly; *amicus* actually has wholly mischaracterized the position of appellant Northern. The position of appellant Northern, as set forth in its brief, can be summarized as follows:

1. The Constitution allows Congress to create legislative courts under Article I as well as inferior federal courts which exercise the "judicial power of the United States" under Article III.

2. Article I courts may not receive Article III "judicial power" and do not exercise the "judicial power of the United

States;" rather, their exercise of judicial powers is done pursuant to their Article I authority.

3. Article I courts and Article III courts can be distinguished by their scope of jurisdiction; Article I courts are granted only limited or special jurisdiction, whereas Article III courts enjoy much broader "general jurisdiction."

4. The bankruptcy courts are courts of specialized or limited jurisdiction and are properly constituted Article I legislative courts.

5. The bankruptcy courts' exercise of judicial powers can be undertaken only within the limited jurisdiction conferred upon them as Article I courts. That exercise does not conflict with the Article III "judicial power."

It is remarkable that neither appellee nor its *amicus* has addressed this argument directly. It is more remarkable that the appellee's *amicus* could state, as it does at page 6 of its brief, that appellant Northern does not appear to seriously challenge the conclusion that the bankruptcy courts have been vested with the judicial power of the United States as defined in Article III, Section 2. This is the very point of appellant Northern's position; i.e., that the bankruptcy courts do not exercise the "judicial power of the United States."*

* It is interesting to note that amicus, while mischaracterizing appellant Northern's position, itself takes a contradictory position with respect to this issue. Referring to decisions regarding the Court of Customs and Patent Appeals and the Court of Claims, amicus states: "Those decisions provide no basis for the assumption that the judicial power of Article III may be vested in a non-tenured court. They rest, rather, on the fact that the matters committed to those courts did not necessarily fall within the judicial power, as defined in Article III, at all" (Am. 20). References to appellee's brief are cited herein as "Ap. ," references to its amicus' brief are cited herein as "Am. ."

III. THE ARGUMENTS ADVANCED BY APPELLEE AND *AMICUS* ARE UNPERSUASIVE.

A. Bankruptcy Courts Do Not Exercise the Full Panoply of Judicial Powers As Courts of General Jurisdiction.

Both appellee and *amicus* argue that bankruptcy courts have been given virtually all of the powers of the federal courts and that bankruptcy courts exercise the full panoply of judicial powers. (Ap. 31; Am. 6). Such an assertion ignores the essential distinction between the bankruptcy courts created by the Reform Act and the nature of inferior federal court jurisdiction or the jurisdiction of "courts of general jurisdiction."

The bankruptcy courts created by the Reform Act may determine any controversy *only* if there is a bankruptcy. The bankruptcy court cannot entertain any claim for relief in the absence of a bankruptcy while inferior federal courts created under Article III may exercise their judicial powers without regard to any such precondition or limitation, *i.e.*, as in the case of courts of general jurisdiction.*

The bankruptcy courts as Article I courts do not act as courts of general jurisdiction. Rather, they can entertain no action or controversy unless and until a bankruptcy occurs. Only after that precondition has been satisfied may a bankruptcy court determine actions "related to" the bankruptcy. Even then, the court's judicial powers are not as extensive as an Article III court's powers.**

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* Appellee's and its amicus' argument that all cases or controversies "arising under" the laws of the United States require decisions by an Article III judiciary (Ap. 19; Am. 11) is patently erroneous. Validly constituted legislative courts have always determined questions "arising under" the laws of the United States. The Tax Court and Court of Military Appeals every day decide disputes "arising under" federal law.

** See appellant Northern Brief at 21; appellant United States of America's Brief at 5.

B. Congress Did Not Reject Article I Status for the Bankruptcy Courts.

Both the appellee and *amicus* argue that Congress specifically rejected Article I status for the bankruptcy court. (Ap. 31; Am. 4). This argument is premised upon the fact that Congress did not employ specific language in the Act stating that the bankruptcy court was created under Article I and, further, upon the argument that by styling the bankruptcy court as an adjunct to the District Court Congress recognized that the court would be exercising the judicial powers of Article III. Neither of these assertions is persuasive or determinative of the question as to whether the bankruptcy courts are properly constituted Article I courts, however.

As has been noted in the appellants' briefs, at the time the Reform Act was under consideration by Congress, there was a wide divergence of opinion concerning whether a bankruptcy court of the kind contemplated could be validly created under Article I or whether such court had to be created under Article III. Some scholars and commentators indicated that Article I status would be appropriate while others reasoned that such a court could only be created under Article III; and still others could provide no opinion at all based upon their view of the state of the law. Congress, faced with the various contradictory and inconsistent views of the scholars and commentators, obviously attempted to reach a solution which it felt resolved those contradictory positions.*

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* Appellee and the amicus attempt to raise the specter of a willful Congress bent on the piecemeal destruction of the inferior federal judiciary (Ap 20; Am. 14). They argue in effect that if the Bankruptcy Reform Act and the grant of jurisdiction to the bankruptcy courts are upheld, Congress will feel compelled to create specialized courts to hear all of the matters within the government's enumerated powers in Article I, §8. Such an intent and action on the part of Congress, however, cannot be inferred.

Prior to enactment into legislation, each of the bills in the House and Senate dealt with this subject very differently. The House bill (H.R. 8200) would have created an independent bankruptcy court under the auspices of Article III and would have provided Article III judges with lifetime tenure and salary guarantees. The Senate Bill (S. 2266), on the other hand, proposed the establishment of a new bankruptcy court as an adjunct of the U.S. district court, with judges appointed to 12-year terms.

The Senate Report outlines the alternatives it considered with respect to this issue:

> A considerable body of opinion has developed in support of the establishment of a bankruptcy court separate from the United States district court, either as an Article III court modeled after the present district court, as a separate Article I court patterned after the U.S. Tax Court, or as a hybrid court consisting of an Article I bankruptcy trial court appended to an Article III court of bankruptcy appeals. S. Rep. No. 95-989, 95th Cong., 2d Sess. 15, 16 (1978).

The ultimate result reached by both Houses of Congress, of course, more closely reflects the Senate version, or "a hybrid court consisting of an Article I bankruptcy trial court appended to an Article III court." The House version—with a separate Article III judiciary—was expressly rejected in the final legislation.

A fair reading of the legislative history reflects a compromise approach to a perceived constitutional problem known to the Congress. By creating the bankruptcy court as an adjunct to the District Court, Congress sought to provide a role for Article III courts in the administration of the bankruptcy

laws while at the same time creating the bankruptcy courts as Article I courts. It is clear upon any reasonable reflection that by using such a hybrid approach Congress indeed recognized that it was creating a legislative court and not an Article III court.

C. Appellee's Attempts to Distinguish and Limit *Canter* and *Palmore* Are Incorrect.

Appellee's limited interpretation of *American Insurance Co. v. Canter*, 26 U.S. (1 Pet.) 511 (1828), and *Palmore v. United States*, 411 U.S. 389 (1973), cannot be reconciled with other decisions of this Court. For example, appellee explains *Canter* as simply an exercise of the government's sovereign power in the territories (Ap. 33). This neat distinction, however, does not square with the Court's later decisions in *United States v. Coe*, 155 U.S. 76 (1894), upholding an untenured private land claims court exercising jurisdiction in certain western states and territories, and *Ex parte Bakelite Corporation*, 279 U.S. 439 (1929). Although *Coe* on its facts was limited to a claim arising in the territory of Arizona, the Court in *Ex parte Bakelite* made it clear that the decision in *Coe* would apply as well to lands within the states. 279 U.S. at 415. Moreover, this limited interpretation of *Canter* also overlooks the practical effect of *Crowell v. Benson*, 285 U.S. 22 (1932), in which a legislative court's authority to make awards to persons injured in the course of maritime employment was upheld.

The argument advanced by both appellee and *amicus* with respect to *Palmore* likewise is unpersuasive. In *Palmore* this Court determined that Article III requirements "must in proper circumstances give way to accommodate plenary grants of power to Congress to legislate with respect to specialized

areas having particularized needs and warranting distinctive treatment." 411 U.S. at 98. Appellee and *amicus* interpret and limit the term "specialized areas" to geographic areas. The better interpretation, however, is that the term encompasses substantive legal areas (such as tax and bankruptcy) which Congress properly has determined have particularized needs and require distinctive treatment.

Congress, following its exhaustive study of the bankruptcy area and in enacting the Reform Act concluded that bankruptcy is such a "specialized area." As the House Report recognized,

> The bankruptcy court system continues to operate today despite an antiquated law that limits its effectiveness. The increasing burden being placed on the system demands that the system be made workable and efficient before the burden becomes intolerable. H. Rep. No. 95-595, 95th Cong., 1st Sess. 52 (1977).

Having made such determination, Congress' solution of providing for a specialized Article I bankruptcy court appended to and supervised by Article III courts reflects a wholly reasonable, and constitutionally permissible, approach.

This hybrid approach adopted by the Congress represents a practical, deliberate solution to a severe problem. It achieves a long-overdue restructuring of an archaic bankruptcy system formulated "in the horse and buggy era of consumer and commercial credit," a system ill-suited to the demands of today's needs and institutions.

CONCLUSION

The judgment of the District Court should be reversed.

Respectfully submitted,

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